

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

O'DELL ALLEN JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

May 9, 2006

No. 260308

Wayne Circuit Court

LC No. 04-009583-01

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant was convicted at a bench trial of possession of a weapon by a felon, MCL 750.224f, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent terms of 17 to 60 months' imprisonment for both the felon in possession and the concealed weapon convictions, plus two years' consecutive imprisonment for the felony-firearm conviction. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first claims that his convictions of both felon in possession and felony-firearm violate the double jeopardy clauses of the state and federal constitutions. This claim has been squarely addressed and rejected by our Supreme Court and this Court. *People v Calloway*, 469 Mich 448; 671 NW2d 733 (2003); *People v Dillard*, 246 Mich App 163; 631 NW2d 755 (2001). Defendant's reliance on *Ball v United States*, 470 US 856; 105 S Ct 1668; 84 L Ed 2d 740 (1985), is without merit since that case involved different conviction offenses and required the United States Supreme Court to determine congressional intent in passing the federal statutes, not the Michigan Legislature's intent in enacting the statutes at issue here.

Next, defendant claims there was insufficient evidence to support his convictions of felon in possession and carrying a concealed weapon. We disagree. Although the handgun used by defendant was not recovered, one of the complainants testified that, after hearing what sounded like gun shots coming from behind him, he turned and observed defendant standing 20 to 25 feet away with his arm extended while holding a silver-blue handgun. The complainant then saw defendant place the gun in his left-side waistband, underneath his untucked shirt. Defendant was pointing the handgun in the direction of a woman whom he had previously yelled and cursed at. Thereafter, defendant approached the complainant and said that he was shooting at the woman, not the complainant. Viewed in a light most favorable to the prosecution, we hold that the

evidence was sufficient to enable a reasonable trier of fact to find beyond a reasonable doubt that defendant possessed the handgun. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000); *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). We will not, as defendant urges, substitute our judgment for that of the trier of fact in assessing the credibility of the witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997). For the same reasons, we reject defendant's argument that the verdict was against the great weight of the evidence.

Affirmed.

/s/ Helene N. White  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot